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May 16, 1997

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### BY HAND DELIVERY

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

Re: In the Matter of Implementation of Section 304 of the  
Telecommunications Act of 1996, Commercial Availability  
of Navigation Devices  
CS Docket No. 97-80

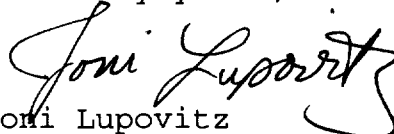
Dear Mr. Caton:

Enclosed for filing are an original and eleven copies of the  
Consumer Electronics Retailers Coalition Comments On Notice Of  
Proposed Rule Making regarding the above-captioned matter.

An additional copy to be date stamped and returned with the  
messenger for our files is also enclosed.

Thank you for your assistance.

Sincerely yours,

  
Joni Lupovitz

Enclosures

cc: Barrett L. Brick, Cable Services Bureau  
(w/encl. & diskette)  
International Transcription Services, Inc.  
(w/encl.)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Office of Secretary

In the Matter of )  
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Implementation of Section 304 )  
of the Telecommunications ) CS Docket No. 97-80  
Act of 1996 )  
 )  
Commercial Availability )  
of Navigation Devices )

**CONSUMER ELECTRONICS RETAILERS COALITION**  
**COMMENTS ON NOTICE OF PROPOSED RULE MAKING**

Dated: May 16, 1997

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## SUMMARY

The Consumer Electronics Retailers Coalition ("CERC") includes Best Buy, Circuit City, Montgomery Ward, Sears, Tandy, the International Mass Retail Association, the National Retail Federation, and the North American Retail Dealers Association. CERC member companies offer consumers better value at lower prices by stocking new products that integrate the features and technologies that consumers want. But the consumer electronics retailer market share for addressable cable "boxes" is essentially zero. If allowed to continue into the digital age, this noncompetitive situation will result in extraordinary waste and redundancy.

New Digital Video Disk ("DVD") players, Direct Broadcast Satellite ("DBS") receivers, Digital TVs, and specially configured computers will include about 85-95% of the circuitry or software necessary for a digital cable set-top box -- and even more if they contain a security interface. But unless the Commission acts quickly in this proceeding, consumers will not be able to use any of this functionality to gain access to most cable and OVS systems. A marketplace window of opportunity will close, and a new digital *status quo* will deny consumers any effective choice.

In new Section 629 of the Communications Act, Congress instructs the Commission to assure the availability of navigation devices from manufacturers and retailers not affiliated with any multichannel video programming distribution ("MVPD") system operator. The key challenge is to *achieve national portability of navigation devices*.

Obstacles as to (1) security, (2) transmission variants, and (3) feature compatibility prevent a consumer from entering a retail store and obtaining a navigation device that will work with both the consumer's present MVPD and similar systems nationally. Until these obstacles are overcome, there will be little opportunity for independent manufacturers and vendors to produce and stock navigation devices.

Some MVPD systems are not so constrained. For example, some DBS systems already offer a single national system and a security interface that enables independent manufacture and sale. Such systems, that now support competitive manufacture and distribution, are in compliance with Section 629 and should not be further regulated at this time.

Conversely, to the extent cable and other MVPD systems, including OVS systems, do not support national portability of devices obtained from independent manufacturers and vendors, they should be required to become technically capable of supporting this degree of competitive availability.

To accomplish national portability of competitive devices, the Commission should assure that all MVPD systems, by dates certain for specific technical accomplishments, support the following basic technical attributes:

- a *national security interface, in all new navigation devices*, that allows the circuitry containing and implementing only security "secrets" to be supplied separately by system operators, as part of the network;

- national compatibility among like transmission standards; and
- maximum feature interoperability of like devices with local networks.

If these goals can be achieved, further interoperability can be pursued in the marketplace, or if necessary, in a subsequent proceeding.

In Section 629, Congress charged the Commission with working with private sector standards bodies to achieve competitive availability. But rather than itself engage in standard setting, the Commission in its regulations need only assure that by dates certain, MVPD systems that do not presently comply with Section 629 will support standards that do achieve national portability and competitive availability. MVPD systems that fail to meet these deadlines should not be allowed to deploy additional navigation devices until they do so.

#### Security Interfaces to Achieve National Portability.

The private sector has already developed standard designs for both digital systems (a National Renewable Security Standard or NRSS) and analog application (a separate "security module" for use with a Decoder Interface). For MVPD systems that do not already support national device portability, the Commission should require the following:

- By January 1, 1998, the Commission should receive and publish particular NRSS and analog interface specifications to which such MVPD systems and devices must adhere.
- System operators should be required to offer NRSS cards and analog descrambler modules supporting competitively



procured navigation devices, as appropriate, no later than July 1, 1998.

- MVPD systems must specify and support for all devices deployed on their system after January 1, 1999, including those they furnish directly to consumers:  
(a) a version of the NRSS for use in all digital system devices and (b) a nationally portable analog security interface for use in analog system devices.

Digital Transmission Compatibility. The private sector also has made great strides in standardizing digital transmission. The Commission needs to assure that:

- Variations in transport and modulation methods are sufficiently compatible that the expense for devices to deal with local variations is relatively trivial; and
- Information as to such variations is adequately disclosed.

The Commission should require that MVPD systems that do not presently support competitive availability must, if MPEG-based, meet specified indicia of compatibility by July 1, 1998.

Feature Compatibility. Achieving national portability will require further action by the Commission to afford device manufacturers sufficient notice and ability to design devices to work with proprietary system features. This means that:

- There must be a standard physical and electrical interface through which system-compliant devices can be attached;
- The system's operation and non-security specifications must be adequately described, with appropriate notice, so that device manufacturers can fashion compliant devices (as in the case of Part 68 network disclosure requirements);

- Any necessary intellectual property rights should be available for license on a reasonable and nondiscriminatory basis; and
- Cable modem issues should be resolved expeditiously, as only feature compatibility issues are raised, but not at the expense of progress re security and transmission.

Interpretation of Anti-Subsidy Provision. The anti-subsidy provisions in Section 629(a) clearly apply *only* to system operators, as a *condition* on their being allowed to persist in offering navigation devices directly to customers. The anti-subsidy rules have no application whatever to product distribution, by anyone, through manufacturers or retailers not affiliated with a system operator.

Explicit Sunset Provision. The Commission should apply its regulations to all noncompliant systems until Section 629's three explicit sunset requirements have been satisfied. Any attempt to modify or divide these requirements would be directly contrary to the clear statute and legislative intent.

\* \* \*

What the Commission does in this proceeding will determine whether consumers enter the DTV era with an ability to use their computer and consumer electronics products as navigation devices, or whether they will be saddled with the same old redundancies and frustrations.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304	)	
of the Telecommunications	)	CS Docket No. 97-80
Act of 1996	)	
	)	
Commercial Availability	)	
of Navigation Devices	)	

**CONSUMER ELECTRONICS RETAILERS COALITION**  
**COMMENTS ON NOTICE OF PROPOSED RULE MAKING**

The Consumer Electronics Retailers Coalition (the "Coalition" or "CERC") respectfully submits these comments in response to the Federal Communications Commission ("FCC" or "Commission") February 20, 1997 Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding. The Coalition includes Best Buy, Circuit City, Montgomery Ward, Sears, Tandy, the International Mass Retail Association, the National Retail Federation, and the North American Retail Dealers Association. These consumer electronics retailers and their trade associations serve the most competitive market for electronics equipment in the world.

Consumer electronics retailers have been able to offer consumers better value at lower prices by stocking new products that integrate the features and technologies that consumers want. But choice, feature integration, and consumer value have not characterized the market for some types of "navigation devices." The consumer electronics retailer market share for addressable cable "boxes" is

essentially zero. There are no consumer electronics industry products, and no computer products, that can offer access to the systems these "boxes" serve.

If allowed to continue into the digital age, this noncompetitive situation would result in extraordinary consumer waste and redundancy. Consider:

- Digital Video Disk ("DVD") players, recently put on sale, include about 85% of the signal processing circuitry required of a digital cable "set-top box."
- Direct Broadcast Satellite ("DBS") receivers also include about 85% of the signal processing circuitry necessary for a digital set-top box, and they already have a security interface.
- A Digital Television ("DTV") receiver designed to receive signals in any of the ATSC formats (or a personal computer so configured) will include about 95% of the circuitry or software necessary for a digital cable set-top box -- even more if it contains a security interface.

Simply put, in the near future consumers are going to be buying, in consumer electronics and computer products, virtually all the functionality they would need to have a digital cable navigation device. Yet unless the Commission acts quickly in this proceeding, consumers will not be able to use any of this functionality to gain access to most cable and open video system ("OVS") networks.

In passing Section 304 of the Telecommunications Act of 1996 (the "1996 Telecomm. Act"), codified as new Section 629 of the Communications Act,<sup>1/</sup> Congress was determined to put

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<sup>1/</sup>The Commission refers to this provision as Section 304 of the Telecommunications Act of 1996 in the title of this proceeding, and as Section 629 of the Communications Act in (continued...)

an end to a regulatory regime that requires the American public to pay for the same new capabilities again and again and again. Congress saw no reason for consumers to have to juggle unnecessary and redundant boxes, to support a regulatory system designed to preserve technically outmoded objectives.

The present regulatory system for navigation devices did at one time have a legitimate rationale. System operators need to control access to their signals. Until this decade, such control needed to include physical distribution of the entire navigation device -- including the circuitry that has nothing to do with security. This circuitry otherwise could have been integrated into competitive products. Most state law, supported by federal policy, criminalizes the distribution of devices designed to afford system access, unless the device itself is authorized by the system operator. System operators, intent on physical control of security circuitry and the "secrets" on which it depends, have not authorized independent manufacture or distribution of such devices. Hence, independent manufacturers and retailers have not been able to offer products competitive with those of system operators because they cannot include the "secret" components. The

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<sup>1</sup>/(...continued)  
the text of its Notice. We will refer to "Section 629" except in the specific context of discussing the introduction and passage of "Section 304."

operators' vulnerability has resulted, in time, in a government-protected monopoly.

Congress first recognized and expressed displeasure with the monopoly on access devices in the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").<sup>2/</sup> In directing the Commission to address compatibility problems, Congress urged the Commission to "promote" the competitive availability of "converter boxes."<sup>3/</sup> Now, in Section 629, more bluntly and directly, Congress instructs the Commission in its regulations to assure the availability of navigation devices from manufacturers and retailers not affiliated with any multichannel video programming distributor ("MVPD").

The congressional mandate is by no means arbitrary. Congress had before it ample evidence that the technical vulnerabilities that have effectively insulated system operators from competition have already been overcome. Private sector standards activity has produced digital and analog *security interfaces* that allow the operator to distribute security circuitry, while all other navigation circuitry can be furnished in competitive computer or

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<sup>2/</sup>Pub. L. No. 102-385 (amending the Communications Act of 1934 by adding new section 624A, codified at 47 U.S.C. § 544a).

<sup>3/</sup>Section 624A of the Communications Act requires the Commission to prescribe regulations "to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes." 47 U.S.C. § 544a(c)(2)(C).

consumer electronics products. All that is necessary is a clear mandate that this new technology be applied so as to reform an obsolete regulatory structure. Congress has now supplied this mandate in Section 629.

When Congress charged the Commission to work with private sector standards bodies to achieve competitive availability,<sup>4/</sup> it made explicit its expectation that new technical standards need to be applied in order to eliminate redundancy and enable competition. Yet because the private sector has already accomplished so much, the Commission need not itself engage in, or even closely supervise, standards activity. The Commission requires only a clear purpose and plan to achieve specific results by clearly stated dates.

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<sup>4/</sup>Section 629(a) provides, "The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability [of customer premises equipment] . . ." 47 U.S.C. § 549(a). Thus, the statutory language assumes that new standards will be necessary. Indeed, the Conference Report explains:

In prescribing regulations to ensure the commercial availability of such equipment to consumers, the Commission is directed to consult with private standard-setting organizations, such as IEEE, DAVIC (Digital Audio Video Council), MPEG, ANSI, and other appropriate bodies. . . . One purpose of this section is to help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment from the cable system or network operator. Thus, in implementing this section, the Commission should take cognizance of the current state of the marketplace and consider the results of private standards setting activities.

S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 181 (1996).

If the Commission should fail to focus and insist upon accomplishment of these key objectives, it will fail to enforce Congress's mandate. A marketplace window of opportunity will close, and the new digital status quo will deny consumers any effective choice. Digital technology is being introduced to the consumer electronics market now, by both "computer" and "consumer electronics" companies. But already, MVPD system operators are requiring consumers to obtain redundant and expensive digital appliances that are tied to unique local systems. Once in place, such new digital systems cannot easily be made subject to competitive availability. System operators need to be put on notice now that they implement such systems at their own risk.

CERC members have long been frustrated by the technologically outmoded and noncompetitive market for some navigation devices. We joined with leaders of the information technology and consumer electronics industries in calling Congress's attention to this problem, and to the fact that it could and should be solved expeditiously. We vigorously supported the enactment of Section 304 of the 1996 Telecomm. Act, as mandating such a solution.<sup>5/</sup> We

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<sup>5/</sup>The Coalition and its member companies have also participated actively in ET Docket 93-7 (Compatibility Between Cable Systems and Consumer Electronics Equipment), and CS Docket 95-184 (Inside Wiring), which have addressed issues of competitive availability both before and after the enactment of Section 304. See generally Comments, Reply Comments and other submissions filed by CERC, Circuit City Stores, Inc., and Tandy Corp. in ET Docket 93-7 and CS Docket 95-184; see also July 1996 Comments and August 1996 (continued...)



urge the Commission to act with similar purpose and determination. The price of delay -- for everyone -- is simply too high.

I. THIS PROCEEDING SHOULD FOCUS ON ATTAINING NATIONAL CONSUMER PORTABILITY FOR NAVIGATION DEVICES.

The Commission properly inquires as to the appropriate scope for this proceeding. Clearly the Commission has inherent power to take broad steps, beyond the explicit statutory command. Indeed, the Commission deregulated most of the telephone industry, including customer premises equipment ("CPE"), without benefit of the sort of direct congressional mandate supplied by Section 629. Section 629 itself makes clear that the congressional mandate neither expands nor diminishes the powers of the Commission.<sup>5/</sup>

The Coalition believes, however, that given the urgency and potential complexity of the task, the Commission's approach should be *carefully focused*. *The Commission should concentrate on eliminating the main technical and regulatory*

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<sup>5/</sup>(...continued)

Reply Comments of Circuit City Stores, Inc. filed in MM Docket 87-268 (Advanced Television Systems) and August 1996 Reply Comments of Circuit City Stores, Inc. in CS Docket 96-133 (Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming). In accordance with the Commission's advice to commenters, we ask that these filings be considered a part of the record in this proceeding.

<sup>5/</sup>Section 629(f), 47 U.S.C. § 549(f), states: "COMMISSION'S AUTHORITY.--Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996."

obstacles to competitive availability. Accordingly, the Commission should take only such steps as are necessary to assure that a consumer can obtain a navigation device from a manufacturer and a vendor that are independent of the system operator, with confidence that the device should be useful anywhere the consumer moves in the United States.

Essentially, the key challenge for the Commission in this proceeding is to achieve national portability of navigation devices. To accomplish this, the Commission should assure that all MVPD systems, by a date certain, support the following basic attributes:

- a national security interface, in all new navigation devices, that allows the circuitry containing and implementing security "secrets" to be supplied separately by local system operators, as part of the network;
- national compatibility among like transmission standards; and
- maximum feature interoperability of like devices with local networks.

The Commission could adopt more ambitious goals -- such as interoperability across different MVPD networks. But if those goals enumerated above can actually be achieved, further interoperability can be pursued in the marketplace, or if necessary in a subsequent proceeding.

As the Commission proceeds, it should make clear that limitations on the scope of its orders are not based on any artificially derived restrictions or "sunset" doctrines that appear nowhere in Section 629. The "sunset" provision, Section 629(e), is quite explicit about the findings that

must be made before that section should cease to apply.<sup>2/</sup>  
In making decisions as to the scope of initial orders to enforce the law, the Commission need not and should not adopt any non-statutory faux sunset device to rationalize decisions not to address any particular service or product in its orders.

A. This Proceeding Should Focus On Any MVPD Service That Does Not Support Consumer Retail Choice And Portability.

There are unnecessary regulatory obstacles preventing a consumer from entering a retail store and obtaining a navigation device that (a) will work with the consumer's MVPD system of choice, and (b) is likely to work with a system available in any locality to which the consumer may move. These are:

- (1) No retailer can stock a device capable of giving compliant responses to a local cable operator's security system without running afoul of state and federal law.

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<sup>2/</sup>Section 629(e), 47 U.S.C. § 549(e), provides:

SUNSET.--The regulations adopted under this section shall cease to apply when the Commission determines that--

(1) the market for [MVPDs] is fully competitive;

(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

(3) elimination of the regulations would promote competition and the public interest.

- (2) If problem (1) is overcome through a national security interface, a digital device still might encounter a transmission system different from the one used in the consumer's local system (not a problem for analog devices, which are all NTSC compatible).
- (3) If problem (2) is overcome through transmission compatibility, a digital or analog device might or might not function compatibly with all of the features of the local cable system, which may be based on unique and/or proprietary technical implementations.

If the Commission is to comply with the congressional mandate, it must focus on doing away with *all* of these obstacles. Once these can be overcome without degrading system security below present levels, then any MVPD system will be *capable of* complying with the mandate of supporting competitive availability of navigation devices from manufacturers and retailers not affiliated with the system operator. Only after this capability is achieved can the Commission's regulations govern conduct accordingly.

B. Direct Broadcast Satellite Services Comply With The Act If They Offer Nationally Portable Products To Consumers Through Manufacturers And Retailers Independent Of The System Operators.

Some MVPD systems are not constrained by any of the limitations listed above. For example, direct broadcast satellite ("DBS") systems offer a single system nationally, so obstacles (2) and (3) are not present. Additionally, some systems already have a security interface that allows at least key elements of the security system to be supplied separately and directly by the system operator.

Accordingly, the navigation devices for these systems can be, and indeed are, manufactured and marketed by manufacturers and retailers that are not affiliated with the system operator.

So long as navigation devices for such an MVPD system are competitively manufactured and sold to consumers by unaffiliated manufacturers and retailers, it seems to the Coalition that both the MVPD system and the navigation devices that serve it are in compliance with Section 629 and should not, at least at this time, be subject to any further regulatory imposition in this respect. The Commission does have the power -- at least until such time any formal sunset findings are made under Section 629(e) with respect to such systems -- to require further measures in aid of interoperability. But in light of what must be done in areas that presently do not conform to the congressional mandate, the Coalition does not see why the Commission should further regulate systems that are in compliance.<sup>8/</sup>

Of course, to the extent that an MVPD system *can* be in compliance but chooses not to be, the Commission's regulations should apply. For example, a DBS system should be considered in compliance with the requirements of Section 629 only to the extent that navigation devices for that

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<sup>8/</sup>Accordingly, the Commission's questions with respect to how many manufacturers must be licensed for any particular MVPD systems to be "competitive," etc., are inapposite. The systems are in compliance and so should not be subject to any further regulatory imposition at this time.

system are, indeed, made available to the public through one or more manufacturers and retailers not affiliated with the system operator.

C. To The Extent Cable And Other MVPD Services Do Not Support National Portability Of Devices Obtained From Independent Manufacturers And Vendors, They Should Be Required Through This Proceeding To Achieve This Degree Of Competitive Availability.

Navigation devices for many of the program services offered by cable television MVPDs are not competitively available because local cable systems are subject to the obstacles set forth in Section I.A., above:

- the security circuitry is physically embedded in the device, so the system operator will not relinquish its monopoly on device distribution;
- system operators are free to implement incompatible means of digital transmission, so that a device that produces a picture and sound with one system may not do so with another; and
- system operators are free to implement unique or proprietary features without providing any notice or opportunity for navigation device manufacturers to make their devices compliant.

Because some local system operators are free to implement and preserve these aspects of systems that are inconsistent with competitive availability, no system operator -- however well motivated -- can create or support a market for competitively available devices. The local operator could specify its own security interface and publish its own specifications, so as to make independent manufacture and sale of competitive devices possible in theory. But it can do nothing to assure that such a device

would work with any other system in the country. *Without national portability of devices among local systems*, there is not sufficient incentive for a manufacturer to design and make, a retailer to stock and sell, and a consumer to invest in a navigation device offered by anyone other than the MVPD operator.

Clearly it is system support of portable devices that the Commission needs to address as a top priority. If an MVPD system is not *capable of supporting device portability*, no amount of Commission regulation addressing other matters is likely to lead to a satisfactory solution.

- D. To The Extent OVS Systems Do Not Support National Portability Of Devices Obtained From Independent Manufacturers And Vendors, Competitive Availability Regulations Should Apply To Them As Well.

The Commission asks whether OVS systems, which are not listed in the 1996 Telecomm. Act as addressed by Section 304, should nevertheless be considered subject to Commission regulations enforcing Section 629, because they are MVPDs. We believe that the answer is plainly yes.

Whether or not one concludes that OVS systems fall directly under the congressional mandate, it is clear that the Commission has the authority to apply its competitive availability regulations to these systems -- Section 629(f) stipulates that Section 629 neither adds to nor detracts from Commission authority. The question, then, is whether there is any policy reason, or congressional intention to

exclude OVS MVPDs from the core competitive availability obligations that otherwise apply.

There is nothing in the pro-competitive policy reflected in the 1996 Telecomm. Act in general, or in Section 629 in particular, to suggest such an outcome. To the extent an OVS is considered a telecommunications system, telecommunications CPE has long been subject to competitive availability and unbundling requirements. To the extent OVS is analogized to cable or DBS, there is no particular reason to prevent competition.

In fact, application of competitive availability requirements in the OVS context is likely to be less potentially disruptive than in areas where there are already entrenched local networks using divergent technologies. The Commission has an opportunity to achieve competition near the outset of services, where "grandfathering" issues are least intrusive.<sup>2/</sup>

As in the case of DBS and cable, the Commission should make its decisions with respect to OVS systems by determining whether the basic prerequisites for competitive availability are present. If, in an OVS system, navigation devices are available from a manufacturer and a retailer not affiliated with the system operator, and such devices meet the tests of usefulness in other local systems, then no

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<sup>2/</sup>See discussion in Comments of the Electronic Industries Association Consumer Electronics Manufacturers Association, And Consumer Electronics Retailers Coalition, in CS Docket No. 96-46, pp. 10-15 (filed April 1, 1996).



further regulation should be necessary in this proceeding. If the system and devices do not meet these tests, then they should be subject to the same regulations as apply to comparable MVPD systems.

II. THE COMMISSION SHOULD REQUIRE, BY DATES CERTAIN, THAT MVPD SYSTEMS THAT DO NOT SUPPORT COMPETITIVE AVAILABILITY MUST BECOME COMPLIANT AS TO THE ESSENTIAL TECHNICAL ELEMENTS IF THEY ARE TO CONTINUE TO OFFER DEVICES TO CONSUMERS.

We demonstrated in Part I that there is no point in ordering MVPD systems to support competitive availability if they have no capability to do so. Moreover, such capability -- which includes national portability of the device -- can exist only if similar systems in other localities are compliant and compatible. Therefore, for the Commission's regulations to be effective in achieving the result Congress intended, they must address systems' *capability* to support competitive availability -- not just the system operator's policies and intentions. Accordingly, to achieve competitive availability the Commission must require compliance of local systems with key essential elements.

A. Compliant Systems Must Support A Security Interface That Furthers National Portability.

Unless the circuitry that contains and processes security secrets can be separated from the rest of a navigation device, there is no chance that such a device could be manufactured and retailed independently of the local MVPD system. System operators have the legal power to